

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
Streamlined Contributor Reporting	)	
Requirements Associated with Administration	)	
of Telecommunications Relay Service, North	)	
American Numbering Plan, Local Number	)	
Portability, and Universal Service Support	)	
Mechanisms	)	
	)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the	)	
Americans with Disabilities Act of 1990	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution	)	
Factor and Fund Size	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170

**COMMENTS**

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries,  
("BellSouth") hereby submits its comments on the *Further Notice of Proposed Rulemaking* in  
the above referenced proceeding.<sup>1</sup>

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service et. al.*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43, (rel. Feb. 26, 2002) ("*Further Notice*").

1. In the *Further Notice*, the Commission is evaluating the current methodology for assessment and recovery of universal service contributions. Change is the hallmark of the telecommunications marketplace. Indeed, one of the few certainties in the telecommunications industry is that nothing is static. As the Commission updates its policies to take into account marketplace change, universal service should not be exempted from review.

2. The Commission identifies some of the recent changes that have caused it to question the sustainability of the current revenue-based contribution mechanism. The Commission notes, for example, that interstate revenues have recently declined for interexchange carriers and that if the trend were to continue, the contribution base could erode over time that, in turn, could necessitate increasing the universal service contribution factor just to maintain existing levels of support.<sup>2</sup>

3. The Commission was also concerned that the current contribution mechanism's reliance on historical revenues may not adjust quickly enough to relative changes in carriers' revenues. Because a carrier's contribution is based on revenues earned six months prior to the calculation of the factor, the Commission noted the possibility that carriers with increasing revenues obtain a benefit, albeit for a short duration, to the detriment of carriers with decreasing revenues.<sup>3</sup>

4. Another market development identified by the Commission is the growth of wireless communications. As the Commission observed, carriers are bundling service together in flat-rate packages that include both local and long distance services. The *Further Notice* indicates that

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<sup>2</sup> See *Further Notice* ¶¶ 7-8.

<sup>3</sup> *Id.*, ¶ 10.

nearly 20 million mobile wireless customers subscribed to calling plans that do not charge extra for long distance.<sup>4</sup>

5. Other bundled offerings of information services and telecommunications also make it more difficult to identify and segregate interstate revenues. As the *Further Notice* points out, technological developments will continue to strain the Commission's ability to identify interstate telecommunications revenues.

6. All of these market events have caused the Commission to question the future of the universal service contribution base. Accordingly, the Commission seeks to reform the current assessment mechanism to ensure its stability and the sufficiency of the universal service fund as the marketplace continues to evolve. Additional goals of the Commission are to reduce regulatory costs, to continue to have an assessment mechanism that is equitable and nondiscriminatory and to provide contributors with certainty.<sup>5</sup>

7. To be sure, the telecommunications market continues to transform itself. Many of the trends identified by the Commission in the Notice most likely will continue. Indeed, the marketplace is witnessing a substitution of bundled local and long distance packages for discrete local and interstate long distance offerings. With these market changes, interstate revenues become masked. The decline in discretely identifiable interstate revenues, however, does not necessarily mean that the interstate revenue base is unstable. Instead, interstate revenues are mixed into packaged revenues and require a more sophisticated approach to identification and attribution.

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<sup>4</sup> *Id.*, ¶ 12.

<sup>5</sup> *Id.*, ¶ 15.

8. While the identification and segregation of interstate revenues that are in packaged arrangements of both wireline and wireless carriers presents an increased challenge, such a challenge does not make a revenue-based contribution mechanism unworkable. The Commission has the authority to obtain the information and data that is necessary to adjust the revenue mechanism to insure that the universal service assessment mechanism captures the interstate revenues that have migrated away from traditional forms of interstate interexchange services toward the bundled offerings.

9. At the same time, the Commission would have to close the current contribution loophole that allows for interstate communications to shift to internet-based offerings provided by internet service providers (“ISPs”) and, thus, escape assessment for universal service purposes. While the question of having ISPs contribute to the universal service fund is before the Commission in a different proceeding, there is an important principle that must be recognized. Regardless of the assessment mechanism, if it contains exceptions and loopholes, providers will gravitate toward such exceptions in order to avoid universal service assessments. In essence, such exceptions instill instability in the assessment mechanism. It does not matter whether the mechanism continues to be revenue-based or whether the Commission adopts a flat-rate mechanism.

10. In the *Further Notice*, Commission seeks comments on alternatives to a revenue-based assessment mechanism. In particular, the Commission is interested in a flat-rate approach based on connections. As an initial matter, any assessment mechanism must meet certain statutory requirements. The Communications Act mandates that:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the

specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.<sup>6</sup>

Thus, the statute is unequivocal in its requirement – every carrier providing interstate services must contribute to the universal service fund. The only exemption from contributing to the fund that the Commission is permitted to make is for a carrier or class of carrier “if the carrier’s telecommunications activities are limited to such an extent that the level of such carrier’s contribution to the preservation and advancement of universal service would be de minimus.”<sup>7</sup>

11. As a threshold matter, any assessment mechanism must be evaluated in terms of this statutory requirement. If the mechanism fails to pass statutory muster, it must be rejected. The statutory requirement is non-optional.

12. The *Further Notice* seeks comment on the proposal submitted by the USF Coalition.<sup>8</sup> The essential elements of the Coalition’s proposal are that residential wireline and wireless connections would be assessed \$1.00 per connection per month and pagers would be assessed \$.25 per month; business connections would be assessed based on connections and capacity. Under the Coalition proposal, ILECs and CLECs would be responsible for paying the wireline assessments, the wireless carriers would be responsible for the wireless assessments and paging carriers would be responsible for pager assessments.

13. While the simplicity of the Coalition proposal may be appealing to some, it nevertheless exemplifies the type of mechanism that does not stand up to the statute’s requirement that all interstate carriers contribute to the universal service fund on a nondiscriminatory and equitable manner. The Coalition’s proposal excludes interexchange

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<sup>6</sup> 47 U.S.C. § 254(d).

<sup>7</sup> *Id.*

carriers from any obligation to contribute to the universal service fund. Such exclusion is *per se* unlawful and makes the Coalition proposal a non-starter.

14. The Commission also seeks comment on Sprint's proposal that would create per-connection contribution obligations based on the proportion of industry interstate revenues currently reported by the different industry segments. The specific question asked by the Commission, *i.e.*, would the proposal be equitable, nondiscriminatory and competitively neutral, signals the infirmity in the proposal. The concerns that led the Commission to consider alternatives to a revenue-based contribution mechanism are imported to Sprint's connection-based proposal. For example, Sprint's proposal would not adjust a wireless carrier's contribution despite an increase in the provision of interstate communications. An assessment mechanism cannot freeze contributions levels in the face of known industry changes and pass muster. Such a freeze is not equitable nor is it competitively neutral. One industry segment – wireless carriers, in the case of Sprint's proposal – is favored at the expense of all other industry segments. It is not equitable for non-wireless carriers to shoulder the universal service contribution burden that properly belongs to wireless carriers. Equally significant is the competitive advantage wireless carriers obtain over both wireline local exchange carriers and interexchange carriers. Wireless carriers' services are competitive alternatives for wireline exchange and interexchange services. Shifting a portion of the wireless carriers' contributions to wireline carriers provides a price advantage to the wireless carrier because the wireline carriers' universal service recovery charges are higher than they would otherwise be if the wireless carriers bore their equitable share of the universal service burden.

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<sup>8</sup> The USF Coalition is comprised of AT&T, Ad Hoc Telecommunications Users Committee, WorldCom and e-TUG.

15. Despite the infirmities of the USF Coalition and Sprint's connection-based proposals, such infirmities do not mean that a connection-based proposal cannot be designed in a manner that conforms to the statute's requirements. A connections-based mechanism can be formulated that is equitable, nondiscriminatory and competitively neutral. Such a formulation will require an innovative view of connections.

16. In order for a connection-based contribution mechanism to meet statutory muster, it is necessary that the mechanism recognize that every provider of interstate telecommunications that sells service to an end user has an interstate connection that should be counted and contribute to the universal service fund. Looking at connections in this manner enables the Commission to adopt a mechanism that not only fulfills the statutory mandate that all interstate carriers contribute to the fund but also encompasses the full range of interstate telecommunications providers. A broadened view of connections forms the foundation of a contribution mechanism that is fair and equitable among all providers, and, equally important, minimizes the opportunity for manipulation or avoidance of the contribution obligation through the way services are packaged or classified.

17. In other words, a broadened view of connections would be competitively neutral because no provider of interstate telecommunications would gain an advantage vis à vis a competitor simply by the way it chooses to offer service. Competitive neutrality is a particularly important component of a connections-based mechanism in an environment that continues to be characterized by disparate regulatory regimes. Ensuring that all providers of interstate telecommunications contribute to the universal service will bring the stability to the fund that the Commission seeks.

18. Keeping in mind the characteristics of a properly structured connections-based contribution plan, BellSouth and SBC have jointly developed a proposal for a connections-based contribution mechanism that would meet the statute's requirements. The specific elements of the proposal are being submitted as an attachment to SBC's comments in this proceeding. After the Commission has an opportunity to review the proposal, it will be clear that BellSouth and SBC have crafted a contribution mechanism that is fair to all providers of interstate telecommunications and insures that the contribution mechanism will remain stable over time and generate sufficient funds to meet universal service commitments.

Respectfully submitted,

**BELLSOUTH CORPORATION**

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Date: April 22, 2002



**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 22<sup>nd</sup> day of April 2002 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the party listed below.

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/s/ Juanita H. Lee  
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+ **VIA ELECTRONIC FILING**